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IN THE
COURT OF APPEALS OF INDIANA

JASON R. BOHLINGER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0611-CR-643
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0603-FB-47

May 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Following a jury trial, Appellant, Jason Bohlinger, was convicted of Attempted Robbery as a Class B felony and Intimidation as a Class D felony and was found to be a Habitual Offender. The trial court sentenced Bohlinger to an aggregate term of forty-seven years. Upon appeal, Bohlinger argues that the evidence is insufficient to support the habitual offender determination. Bohlinger also argues that his sentence is inappropriate.

We affirm.

On March 20, 2006, the State charged Bohlinger with attempted robbery and intimidation. On April 10, 2006, the State added a third count alleging Bohlinger to be a habitual offender. Following a jury trial on June 20, 2006, the jury found Bohlinger guilty as charged and further determined him to be a habitual offender. The trial court sentenced Bohlinger to fifteen years for the attempted robbery conviction and enhanced such sentence by thirty years for the habitual offender determination. The trial court also sentenced Bohlinger to two years for the intimidation conviction and ordered such sentence to be served consecutively to the sentence imposed for attempted robbery. In total, Bohlinger received an aggregate sentence of forty-seven years.

Upon appeal, Bohlinger argues that the evidence is insufficient to support the habitual offender determination. We review challenges to the sufficiency of the evidence supporting a habitual offender determination the same as other challenges to the sufficiency of the evidence. See Ramsey v. State, 853 N.E.2d 491, 497 (Ind. Ct. App. 2006), trans. denied. We do not reweigh the evidence, nor assess the credibility of witnesses. Id. We consider only the evidence favorable to the determination and

reasonable inferences drawn therefrom which support the trier of fact's determination and will affirm the determination if it is supported by substantial evidence of probative value. Id.

Pursuant to Indiana Code § 35-50-2-8(a) (Burns Code Ed. Supp. 2006), a person is a habitual offender if the trier of fact finds that the State has proved beyond a reasonable doubt that the person has accumulated two prior unrelated felony convictions. Here, the State alleged that Bohlinger was a habitual offender because he had accumulated prior unrelated convictions for perjury as a Class D felony and resisting law enforcement as a Class D felony. Upon appeal, Bohlinger argues that the evidence did not support one of the alleged prior offenses—perjury.[1]

To prove that Bohlinger was previously convicted of perjury as Class D felony, the State submitted Exhibit 1, which includes certified copies of the following documents: a criminal docket sheet from the Allen Circuit Court bearing Cause No. 02C01-8904-CF-11 ("CF-11") indicating that Bohlinger was convicted and sentenced for perjury as a Class D felony, a charging information showing that Bohlinger was charged with perjury as a Class D felony on April 12, 1989, and a judgment for CF-11 showing that, pursuant to a plea, Bohlinger was found guilty of perjury as a Class D felony and, on

[1] The second allegation set forth that on or about February 5, 2002, Bohlinger committed the offense of resisting law enforcement as Class D felony, for which he was subsequently convicted and sentenced. Bohlinger does not challenge the evidence supporting this allegation.

October 2, 1989, was sentenced to four years executed.[2] The charging information for CF-11 set forth the details of the perjury offense as follows:

> "On or about the 14th day of August, 1987, . . . Bohlinger made a statement under oath as to the burglary of Underground Pipe and Valve Company . . . committed on August 14, 1987, stating that William Anthony Craig and said defendant did the burglary jointly; then, on April 7, 1989, in Allen Circuit Court, while under oath, [Bohlinger] testified that William Anthony Craig had nothing to do with said burglary and that he had been making a false statement when he gave his sworn statement on August 14, 1987, to Detectives Steven Schulien and Ronald Lapp of the Fort Wayne Police Department." State's Exhibit 1.

In the present case, the information setting forth the habitual offender allegation alleged in part that "sometime between the 14th day of August, 1987 and the 7th day of April, 1989," Bohlinger committed the criminal act of perjury, a Class D felony, and that he was later convicted and sentenced for commission of such felony. Appendix at 23. Bohlinger's challenge to the sufficiency of the evidence with regard to the prior perjury conviction is that the evidence established that he committed the felony offense of perjury either on August 14, 1987 or on April 7, 1989. Bohlinger thus maintains that the evidence did not establish that he committed the prior unrelated perjury offense "between" said dates as alleged in the habitual offender information.

We are unpersuaded by Bohlinger's interpretation of the language used in the habitual offender charging instrument. Although perhaps inartfully worded, we conclude that the word "between" in reference to two dates includes those dates defining the time

[2] Further, during the habitual offender phase of the trial, the State called as a witness a probation officer who identified Bohlinger and confirmed that Bohlinger was the same person convicted of the prior perjury offense.

frame. In other words, by alleging that Bohlinger committed the prior perjury offense "between" August 14, 1987 and April 7, 1989, the State adequately alleged that Bohlinger committed the prior felony perjury offense on either of those dates. The State's evidence clearly established that Bohlinger committed the offense of perjury on one or the other of the two dates specified and that he was later convicted and sentenced for such offense. Other than focusing upon the use of the word "between" as relating to the date of the commission of the prior offense, Bohlinger makes no other challenge to the evidence presented by the State to prove that Bohlinger had a prior unrelated conviction for perjury as a Class D felony. We therefore hold that the habitual offender determination is supported by sufficient evidence.[3]

Bohlinger also challenges his aggregate forty-seven-year sentence. Specifically, Bohlinger argues that imposition of the maximum sentence for the habitual offender determination was inappropriate. Pursuant to Indiana Appellate Rule 7(B), we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Bohlinger maintains that the fact that the trial court did not impose the maximum sentence for either of the underlying offenses demonstrates that the nature of the offense and his character do not support imposition of the maximum enhancement for the habitual offender determination.

[3] Having concluded that the evidence fits within that which was alleged in the habitual offender charging information, we thus reject Bohlinger's claim that a material variance exists.

As for the nature of the offense, we note that Bohlinger confronted and physically assaulted his niece during his attempted robbery. Not only did Bohlinger commit the crime against a member of his family, he then attempted to take advantage of the familial relationship and escape criminal liability by asking her not to report the incident. When his niece refused his request, they began fighting and Bohlinger kicked his niece. Later, and despite the fact that a restraining order was in place, Bohlinger contacted his niece, maintained his innocence, told her he could "burn [her] damn house down," and threatened that something could happen to her. Transcript at 86. Bohlinger's actions reflect more than a mere attempted robbery and intimidation.

As for Bohlinger's character, we note that the trial court emphasized his criminal history, characterizing Bohlinger as a "career criminal" with a "substantial and violent criminal history." Sentencing Tr. at 9. We too consider Bohlinger's criminal history for what it reveals about his character. Bohlinger has two juvenile adjudications for burglary, and as an adult, Bohlinger has accumulated twelve misdemeanor convictions for offenses such as criminal mischief, invasion of privacy, operating while intoxicated, battery, and public intoxication. Bohlinger has also accumulated six felony convictions for robbery, criminal confinement, burglary, perjury, resisting law enforcement, and forgery. Bohlinger's criminal history is significant and spans much of his adult life. Also reflecting upon his character is the fact that the present offenses were committed against a family member and that Bohlinger has demonstrated his desire to preserve his own well-being at any expense. In light of the nature of the offense and the character of the offender, we cannot say that imposition of the maximum term for the habitual

offender enhancement[4] was inappropriate. That the trial court did not impose the maximum sentence for each underlying offense, while assigning the maximum term to the habitual offender enhancement, does not persuade us that the habitual offender enhancement is inappropriate.

The judgment of the trial court is affirmed.

SHARPNACK, J., and CRONE, J., concur.

[4] Pursuant to I.C. § 35-50-2-8(h), "The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years." Here, the trial court tied the habitual offender enhancement to Bohlinger's underlying conviction for attempted robbery as a Class B felony. The advisory sentence for a Class B felony is ten years. See Ind. Code § 35-50-2-5 (Burns Code Ed. Supp. 2006). Bohlinger's thirty-year habitual offender enhancement is the maximum he could have received.